

INTERNATIONAL PHILANTHROPY AND CANADA

Tuesday, March 19, 2019

About RSM Canada



60+ partners

600+ people

4 locations

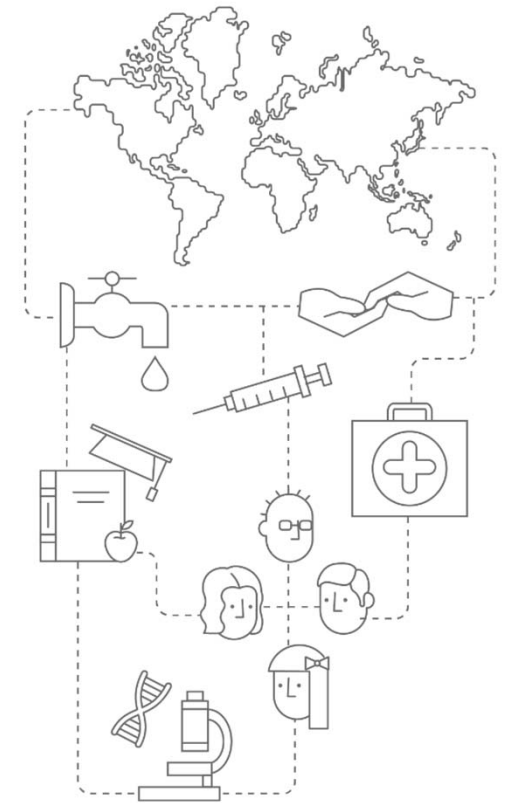
- Currently in 4 major centers across Canada
- Work in close collaboration with our U.S. colleagues to bring world-class expertise to clients on both sides of the border

About RSM Canada NPO industry team

- Dedicated team of professionals serving the NPO sector
 - Audit, tax and consulting
- Attuned to the regulatory changes and trends
- **Our objective:** Help you achieve your mission, locally, nationally and globally

Real Life Example...Why care?

- Identified Canada Revenue Agency compliance issues with an international organization with a subsidiary in Canada
- Reduced exposure to loss of charitable status by:
 - Ensuring appropriate structuring and documentation in place
 - Ensuring appropriate tax receipting guidance for Canadian staff



Your presenters today



Stephen McCourt

National NPO Industry Leader, RSM Canada

Stephen draws on his experience in industry to bring practical, results-oriented accounting & business insights to his not-for-profit clients



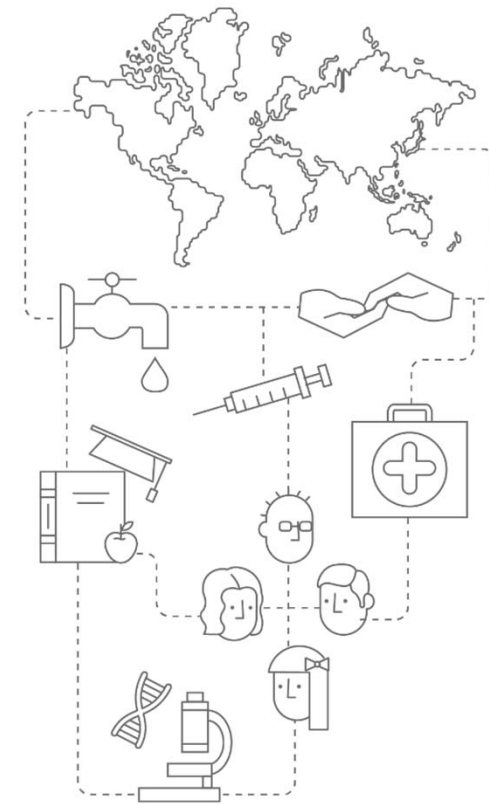
Mark Blumberg

Partner, Blumberg Segal LLP

Mark Blumberg works almost exclusively advising non-profits and registered charities on their work in Canada and abroad.

Agenda

- Quick facts re charitable industry in Canada
- Considerations when fundraising in Canada
- Fundraising rules
- Spending funds in Canada and abroad
- Receipting, reporting and compliance



Charitable Industry in Canada

- Approximately 160,000 non-profits (federal and provincial and unincorporated). Of these 86,000 are Registered Charities (as of 2019)
- \$261 Billion in revenue
- Revenue – about 70% from Government, the rest is earned income, donations
- Most charities have revenue under \$100,000

Question:

At a high level what are some of the considerations when fundraising in Canada?

Some factors

- Is it one time gift from one donor?
- Is donor individual, business, foundation, government, etc.?
- Is it ongoing fundraising?
- Do you have affiliate in Canada?
- How much money is involved?
- Goal in Canada – fundraising, awareness, charitable activities

Question:

If an organization wants to fundraise in Canada what are some of the options for structure?

Options for structuring Canadian charity operations

1. No presence and no fundraising (wait and see)
2. No presence with some fundraising
3. US entity directly operates in Canada and some fundraising
4. Work with existing Canadian registered charity
5. Incorporated NPO (not registered charity)
6. Registered Charity

1. No Presence, No Fundraising

- No operations in Canada
- “Wait and see” approach
- Cons
 - Potentially leaving a lot of funds on the table
 - Very difficult to quickly set up entity like registered charity

2. No Presence, Some Fundraising

- Pros:

- simpler, may be more cost effective
- Some Canadian donors may have US source income

- Cons:

- Cannot issue tax receipts to donors so much harder to fundraise
- Very difficult to quickly set up entity like registered charity

3. US entity Directly Operate in Canada

- Pros

- No separate entity in Canada

- Cons

- Cannot issue tax receipts so much harder to fundraise
- Very difficult to quickly set up entity like registered charity
- Withholding tax may apply and may need Letter of Exemption from non-resident withholding tax
- If permanent establishment then could have registration requirements

Letter of Exemption from Withholding Tax

- Non-resident charities and NPOs are generally subject to Canadian withholding tax on income they derive from Canada
- However, Article XXI of the Canada-US Tax Treaty provides relief from this withholding tax for non-resident religious, scientific, literary, educational or charitable organizations that are exempt from tax under the domestic law of the state of which they are resident
- A US charity that seeks relief under Article XXI must apply to the CRA for the exemption
- Letters of Exemptions generally issued under Tax Treaty for 3 years and then reapply
- Application can take months to be granted
- Currently over 1880 US organizations that are exempt under paragraph 1 of Article XXI

4. Work With Existing Canadian Charity

- Pros

- 86,000 existing charities – likely at least one that does similar work or charity focused on international philanthropy
- May be more efficient and cost-effective to work with existing charity in your sector or geographic area
- Can leverage group's knowledge and expertise of Canada

- Cons

- US group does not control Canadian charity and more limited control over projects
- Charity can terminate relationship at any time
- Differences and disagreements may arise
- Costs can be high in long run

5. Incorporated NPO

- Pros

- Faster to set up than registered charity
- Enjoys tax-exempt status in Canada
- Maintain independence and control over own activities
- More flexibility in allowable activities – don't have to fall under the four recognized “heads” of charity (poverty, education, religion, other purposes)

- Cons

- Cannot issue tax receipts so much harder to fundraise or receive grants
- May be harder to obtain charitable status after operating for a while (more public information for CRA to scrutinize on application)
- Strict rules against earning any profits from activities

6. Registered Charity

- Pros

- Can issue tax receipts, increase Canadian revenue
- Can receive funds from other qualified donees
- Full control over fundraising and own charitable activities

- Cons

- Can take time to obtain registration from CRA
- Increased regulatory compliance requirements
- Activities restricted to those that are charitable at law
- Cannot give to non-qualified donees (almost all 501(c)(3)s without direction and control)
- May not be worth it if expected Canadian donations relatively low

Question:

Can you expand on term registered charity? How different is it from a non-profit that is not a registered charity?

What is a registered Canadian charity?

- Canadian charity must be created or established in Canada
- Canadian charity must be resident in Canada
- 4 heads of charity (relief of poverty, education, religion, other purposes beneficial to the community that the law considers charitable)
- Foreign resident charities cannot become registered charities in Canada

Charity Law Basics

- Non-profits and charities are both tax exempt
- Registered charities are regulated by Charities Directorate of the Canada Revenue Agency (CRA)
- Registered charities fall under both federal and provincial jurisdiction
- *Income Tax Act* – concept of “registered charity” can issue “official donation receipt” with income tax savings for donor
- Benefits and restrictions on registered charities

Question:

When should a Canadian registered charity be established?

Advantages of Charitable Registration

- Can issue official donation receipts
- Exempt from income tax
- Other tax benefits (GST, property taxes, etc.)
- Can receive gifts from other registered charities (Qualified Donees)
- Public recognition and trust
- Many corporations only donate to registered charities
- Some government funds only for registered charities

Disadvantages of Charitable Registration

- Time, money and resources required to apply
- Charities are subject to a number of regulations and restrictions
- Enhanced public scrutiny
- Lots of paperwork
- Must operate programs within the parameters of its legal purposes

Members

- Under the CNCA there can be 1 member to unlimited
- Members are like shareholders except they don't own non-profit – they control non-profit
- Members elect directors and can change articles/by-laws
- Members have power, but frequently overlooked
- Members should be guardian of the group
- Members have increasing rights under new legislation

See Charity Commission guidance RS7 – Membership Charities

Directors

- Minimum 3 directors for a charity or soliciting corporation
- Majority arm's-length, unless private foundation
- Qualifications - 18, sound mind, not bankrupt
- Director generally cannot receive compensation in Ontario (recent changes), also generally not good idea elsewhere
- No residency requirement but...
- Mix of skills - diversity

Question:

What do you need to consider if you
fundraise within a registered charity
in Canada?

Fundraising by Registered Charities

Canada Revenue Agency (CRA) Charities Directorate
Guidance on Fundraising (CG-013):

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/fundraising-registered-charities-guidance.html>

Fundraising differences

- CRA is de facto regulator, rather than IRS/Attorney Generals
- CRA is well resourced
- Fundraising ideally should be largely unrestricted funds to Canadian charity as granting is not to other Canadian charities but to foreign charity with direction and control
- Can have buckets of funds from many donors that are restricted to certain high priority needs
- Generally only worthwhile to do specific project for donor if over 30,000 -50,000

Question:

What are considerations in spending funds in Canada and aboard?

Grantmaking Inside of Canada by Canadian charities and foundations

- Canadian charities and foundations can transfer resource to qualified donees relatively easily
- Canadian charity cannot gift funds to non-profit in Canada that is not a qualified donee – the Canadian rules for structured arrangements between Canadian charity and Canadian non-profit in Canada are similar to rules for foreign grantmaking by Canadian charity

Grantmaking Outside of Canada by Canadian charities

- There are CRA rules for Canadian charities operating abroad – they are especially important for Canadian charities transferring funds or resources outside of Canada
- The rules are not too onerous and understanding their rationale will assist in compliance
- The rules focus on written agreements, direction + control, monitoring and records

How does Canada compare to US?

- we do not have equivalency determinations
- Canadian “direction and control” test is similar to but more stringent than US expenditure responsibility requirements
- IRS and CRA both have rules
- but what about fiduciary responsibilities?

Qualified donees

- **Qualified donees** – can issue official donation receipts for Income Tax Purposes
- **Non-Qualified donees** – cannot issue official donation receipts
- Very few qualified donees outside of Canada – exceptions are:
 - 600 foreign universities (400 or so in US)
 - A couple of US charities
 - UN and its agencies

What is a non-qualified donee?

- All organizations other than qualified donees
- They cannot issue official donation receipts

Examples include:

- Foreign charities
- Canadian non-profits with no charitable status
- Businesses
- Bono, Obama, Angelina Jolie

CRA's Guidance on Foreign Activities

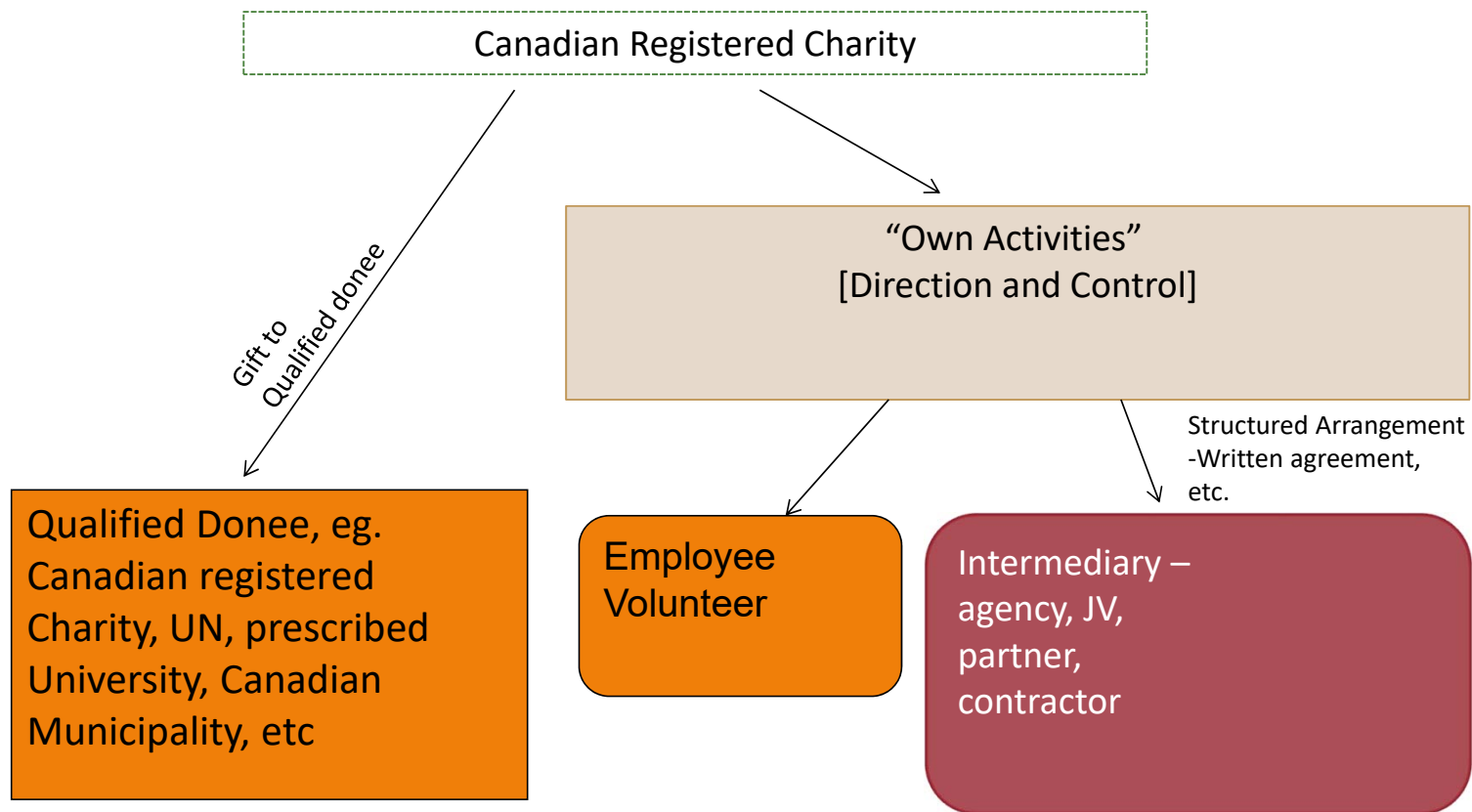
- **Guidance on Canadian Registered Charities Carrying Out Activities Outside Canada**

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html>

“Own Activities” or “Direction And Control”

When not working with qualified donee or own staff need to have:

- Due Diligence of Intermediary (investigate)
- Written agreement
- Detailed description of activities
- Monitoring and Supervision
- Ongoing Instruction for changes
- Periodic Transfers
- Separate Activities and Funds
- Books and Records showing above



What is a Conduit

- “a conduit is a registered charity that receives donations from Canadians, issues tax-deductible receipts, and funnels money without direction or control to an organization to which a Canadian taxpayer could not make a gift and acquire tax relief.”
- Violates *Income Tax Act*
- Can be penalties or revocation

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html>

Description of Activities ***

- Before starting an activity agree on a clear, complete, and detailed description of the activity.
- Depending on the type, complexity, duration, and expense of an activity, the charity should be able to provide documentary evidence that shows:

Question:
What are key issues?

Top CRA Compliance Concerns

- receipting (lack information, mistakes, FMV)
- failure to file T3010
- T3010 omissions
- non-charitable activities
- gifts to non-qualified donees
- failure to maintain direction and control
- fundraising costs (reasonable and proportionate)
- inappropriate or partisan political activities
- unrelated business activities
- tax shelters and fraudulent tax receipts
- transactions with directors

Blumberg Segal LLP

- Blumberg Segal LLP is a law firm based in Toronto, Ontario
- Mark Blumberg is a partner at Blumbergs who focuses on non-profit and charity law
- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising here
- www.canadiancharitylaw.ca and www.globalphilanthropy.ca
- Free Canadian Charity Law Newsletter. Sign up at: <http://www.canadiancharitylaw.ca/index/php/pages/subscribe>
- (416) 361 – 1982 or 1-866-961-1982
- mark@blumbergs.ca

* This presentation is legal information not legal advice

Contact information



Stephen McCourt

National NPO Industry Leader, RSM Canada

Stephen draws on his experience in industry to bring practical, results-oriented accounting & business insights to his not-for-profit clients



Mark Blumberg

Partner, Blumberg Segal LLP

Mark Blumberg works almost exclusively advising non-profits and registered charities on their work in Canada and abroad.

THANK YOU FOR
YOUR TIME AND
ATTENTION





RSM US LLP

+1 800 274 3978

www.rsmus.com

This document contains general information, may be based on authorities that are subject to change, and is not a substitute for professional advice or services. This document does not constitute audit, tax, consulting, business, financial, investment, legal or other professional advice, and you should consult a qualified professional advisor before taking any action based on the information herein. RSM Canada LLP, RSM Alberta LLP and RSM Canada Consulting LP, and their affiliates and related entities are not responsible for any loss resulting from or relating to reliance on this document by any person. This communication is being sent to individuals who have subscribed to receive it or who we believe would have an interest in the topics discussed.

RSM Canada LLP is a limited liability partnership that provides public accounting services and is the Canadian member firm of RSM International, a global network of independent audit, tax and consulting firms. RSM Alberta LLP is a limited liability partnership and independent legal entity that provides public accounting services. RSM Canada Consulting LP is a limited partnership that provides consulting services and is an affiliate of RSM US LLP, a member firm of RSM International. The firms of RSM International collaborate to provide services to global clients, but are separate and distinct legal entities that cannot obligate each other. Each firm is responsible only for its own acts and omissions, and not those of any other party. Visit rsmcanada.com/aboutus for more information regarding RSM Canada and RSM International.

RSM, the RSM logo and *The power of being understood* are registered trademarks of RSM International Association, used under license.

© 2019 RSM Canada. All Rights Reserved.

